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9 Attorneys for Seller and Third-Parties in Interest  
John H. Bellicitti, as Trustee; Mary F. Driggs, as  
10 Trustee; Robert J. Bellicitti, as Trustee; and Harry L.  
Bellicitti, Jr., as Trustee

12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

16 In re  
17 DUTCHINTS DEVELOPMENT LLC,  
18 Debtor.

Case No. 21-51255 MEH

Chapter 11

**DECLARATION OF DANIEL S.  
GONZALES IN SUPPORT OF SELLER  
AND THIRD PARTIES IN INTEREST  
JOHN H. BELLICITI, AS TRUSTEE, ET  
AL.'S MOTION FOR COMFORT ORDER  
OR, IN THE ALTERNATIVE, RELIEF  
FROM AUTOMATIC STAY**

R.S. No. MJB-1

Date: March 4, 2022  
Time: 10:00 a.m.  
Place: Courtroom 11  
Judge: Hon. M. Elaine Hammond

1 I, Daniel S. Gonzales, declare:

2       1. I am an attorney licensed to practice law before all courts in the State of  
3 California. I am a partner of Ferrari, Ottoboni, Caputo & Wunderling LLP, a limited liability  
4 partnership, and real estate counsel of record for Seller and Third Parties in Interest John H.  
5 Bellicitti, as Trustee of the John and Monica Bellicitti 2015 Revocable Trust under Trust  
6 Agreement dated July 9, 2015, as amended, FBO John H. Bellicitti as his sole and separate  
7 property, and as Trustee of the Harry L. Bellicitti Exempt Trust under Trust Agreement dated  
8 April 16, 1997, as amended FBO John H. Bellicitti (“John”); Mary F. Driggs, as Trustee of the  
9 Mary F. Driggs 2012 Separate Property Trust under Trust Agreement dated July 17, 2012, as  
10 amended, and as Trustee of the Harry L. Bellicitti Exempt Trust under Trust Agreement dated  
11 April 16, 1997, as amended, FBO Mary F. Driggs (“Mary”); Robert J. Bellicitti, as Trustee of the  
12 Bellicitti 2015 Revocable Trust under Trust Agreement dated July 9, 2015, as amended, FBO  
13 Robert J. Bellicitti, as his sole and separate property, and as Trustee of the Harry L. Bellicitti  
14 Exempt Trust under Trust Agreement dated April 16, 1997 as amended FBO Robert J. Bellicitti  
15 (“Robert”); and Harry L. Bellicitti, Jr., as Trustee of The Harry and Carol Ann Bellicitti 2015  
16 Revocable Trust under Trust Agreement dated July 8, 2015, as amended, FBO Harry L. Bellicitti,  
17 Jr. as his sole and separate property, and as Trustee of the Harry L. Bellicitti Exempt Trust under  
18 Trust Agreement dated April 16, 1997, as amended, FBO Harry L. Bellicitti, Jr. (“Harry”)  
19 (collectively, the “Bellicittis”). I submit this declaration in support of the Bellicittis’ Motion for  
20 Comfort Order or, in the Alternative, Relief from the Automatic Stay (the “Motion”). Unless  
21 otherwise stated, the facts in this declaration are true of my own personal knowledge, and, if  
22 called upon as a witness, I could and would testify competently thereto. As to those matters  
23 alleged on information and belief, I believe them to be true.

24       2. The Bellicittis are the owners of real property located at 18500 and 18520  
25 Marshall Lane, Saratoga, California (the “Property”).

26       3. On or about October 18, 2018, the Bellicittis, as Seller, and Dutchints  
27 Development LLC, as Buyer, entered into a written Agreement for Purchase and Sale and Joint  
28 Escrow Instructions, as amended (the “Agreement”), for the purchase of the Bellicittis’ real  
- 2 -

1 property located at 18500 and 18520 Marshall Lane, Saratoga, California (the “Property”). A true  
2 and correct copy of the Agreement, as amended, is attached as collective **Exhibit A**.

3       4. The Agreement, as amended, contemplates that Buyer would obtain all  
4 entitlements necessary and appropriate for its intended subdivision of the Property into a project  
5 consisting of six to nine 1-acre parcel single family residences. (See Third Am., at § 3, attached  
6 as collective Exh. A).

7       5. Between December 14, 2018 and March 22, 2021, the parties entered into a total  
8 of seven amendments to the Agreement, ultimately agreeing to extend the escrow Closing Date to  
9 May 31, 2021 at the latest, expressly conditioned on Buyer’s delivery of certain additional  
10 deposits into escrow no later than April 9, 2021. (See Sixth Am. at § 2; Seventh Am. at §§1-2,  
11 both attached as collective Exh. A.)

12       6. Attached as **Exhibit B** is a true and correct copy of the Assignment of Agreement  
13 for Purchase and Sale and Joint Escrow Instructions, dated May 1, 2019, by and between  
14 Dutchints Development LLC, as Assignor, and 18500 Marshall Ln LLC, as Assignee.

15       7. On November 2, 2021, I sent e-mail correspondence on behalf of the Bellicittis to  
16 Buyer’s representative Vahe Tashjian, indicating the Bellicittis were “ready, willing and able to  
17 complete the performance of all of its remaining obligations for the Close of Escrow under the  
18 [Agreement], including without limitation the delivery and recordation of the Grant Deed;” and  
19 demanding that Buyer “complete the performance of all of its obligations for the Close of Escrow  
20 under the [Agreement], including without limitation the payment of the Purchase Price, no later  
21 than November 17, 2021[.]” A true and correct copy of my e-mail dated November 2, 2021 is  
22 attached hereto as **Exhibit C**.

23       8. On December 3, 2021, I sent e-mail correspondence on behalf of the Bellicittis to  
24 Buyer’s representative Vahe Tashjian and First American Title Company (“Escrow Holder”)  
25 declaring Buyer to be in default of the Agreement and demanding Escrow Holder’s payment of  
26 the deposit to the Bellicittis based on such default as provided in Section 2.1.3 of the Agreement.  
27 A true and correct copy of my e-mail dated December 3, 2021 is attached hereto as **Exhibit D**.

28       9. On December 6, 2021, I received an e-mail from Mr. Tashjian, wherein he noted

1 that “if [the] transaction [contemplated by the Agreement] is in fact affected by the Chapter 11  
2 filing of Dutchints Development LLC, then there is an automatic stay imposed that freezes the  
3 transaction.” Mr. Tashjian further opined therein that “[a]ny action in violation of the automatic  
4 stay would require a court order.” A true and correct copy of Mr. Tashjian’s e-mail dated  
5 December 6, 2021 is attached hereto as **Exhibit E**.

6           10. On February 1, 2022, I sent e-mail correspondence on behalf of the Bellicittis to  
7 Mr. Tashjian advising of the Bellicittis' intention to seek confirmation from the bankruptcy court  
8 that the automatic stay in Dutchints Development LLC's chapter 11 case does not prohibit  
9 Seller's pursuit of all available remedies under the Agreement for Buyer's default, including to  
10 terminate the Agreement. A true and correct copy of my e-mail dated February 1, 2022 is  
11 attached hereto as **Exhibit F**.

12        11. On February 8, 2022, I received an e-mail from Mr. Tashjian, wherein he now  
13 maintains that Dutchints Development LLC has no claim in the project contemplated by the  
14 Agreement. A true and correct copy of Mr. Tashjian's e-mail dated February 8, 2022 is attached  
15 hereto as **Exhibit G**.

I declare under the penalty of perjury under the laws of the United States of America that  
the foregoing is true and correct and of my own personal knowledge. Executed this 9<sup>th</sup> day of  
February 2022, at San Jose, California.

/s/ Daniel S. Gonzales  
Daniel S. Gonzales

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